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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,555	08/03/2001	Michael J. O'Neill	2507/101	9456
2101 7590 06/02/2008 BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618				
EXAMINER				
WOO, JULIAN W				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
06/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## NOTICE OF NON-COMPLIANT AMENDMENT

### *Reissue Applications*

1. The amendment filed on September 19, 2007 is in an improper format. For example, original claim 4 is amended but has no corresponding status identifier.

Applicant is reminded that any amendments submitted in a reissue application must comply with 37 CFR 1.173. Please refer to 37 CFR 1.173 for the proper format for an amendment in a reissue application.

The applicant is given a shortened statutory period of **one (1) month** from the mail date of this notice to submit a substitute or supplemental amendment in full compliance with 37 CFR 1.173, *not* 37 CFR 1.121. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

2. In summary, an amendment to claims must be in the following format:

(a) An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (c) below, except that a patent claim or added claim should be canceled by a statement canceling the claim without

presentation of the text of the claim. Alternatively, applicant may effectively rewrite a claim by presenting it as a new (fully underlined) claim with a new claim number (no status identifier “new” required), and canceling the old claim.

(b) Status of claims and support for claim changes. Whenever there is an amendment to the claims, there must also be supplied, on pages separate from the pages containing the changes, the status (i.e., pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes made to the claims.

(c) Changes shown by markings. Any changes relative to the patent being reissued which are made to the specification, including the claims, upon filing, or by an amendment paper in the reissue application, must include the following markings:

(1) The matter to be omitted by reissue must be *enclosed in brackets*;  
and

(2) The matter to be added by reissue *must be underlined*, except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with “<U>” and end with “</U>” to properly identify the material being added.

In short: Brackets and underlining are to be used to reflect only those changes in the text from the original patented text and not from any previous amendment in the reissue application.

(d) Numbering of patent claims preserved. Patent claims may not be

renumbered. The numbering of any claim added in the reissue application must follow the number of the highest numbered patent claim. Renumbering of any claims added in the reissue application will occur upon allowance of the claims.

***Oath/Declaration***

3. The reissue oath/declaration, filed on February 8, 2007, is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid. See 37 CFR 1.175(a)(1) and see MPEP § 1414. That is, Applicant only states that the original patent is "partly inoperative or invalid by reason of the patentee claiming more or less than the patentee had a right to claim," but does not specify between more or less. If the Applicant is broadening, the Applicant should so state (i.e., the patentee is claiming less than the patentee had a right to claim).
4. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. That is, the oath/declaration must not only identify at least one error, it must also state how the at least one error renders the original patent to be partly inoperative or invalid.
5. Claims 1-17 and 33 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

6. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received with any amendment before this reissue application can be allowed.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome the rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

See MPEP § 1414.01.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 3773

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Julian W. Woo/

Primary Examiner, Art Unit 3773

June 3, 2008